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Legislative Performance Audit Committee

Legislative Audit Office
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Memorandum

To: Members of the Legislature
From: Legislative Audit Office
Date: July 25, 2019
Re: Overdue Regulations Report

Overview

By law, state agencies subject to the Administrative Procedure Act (APA) are required to report the status of regulations that are required by statute (“mandatory regulations”) to the Legislative Audit Office by July 1 each year.¹ Additionally, for regulations not developed within three years of a bills effective date, the law requires the relevant legislative standing committee to hold a public hearing on the regulations.

2019 Report

We received reports from all agencies. Two agencies reported overdue mandatory regulations. Those reports were sent to the chairpersons of standing committees with jurisdiction and to the Appropriations Committee if they reported a related appropriation. Attached is a chart indicating the status of all reports the Audit Office received this year. Individual reports from agencies reporting overdue regulations are attached to this memorandum.

¹ Agencies are governed by the APA if they have the authority to make rules and regulations. The Legislature, Commission on Industrial Relations, Nebraska Workers’ Compensation Court, and the Adjutant General’s Office are not considered agencies under the Act. The Secretary of State is considered an agency, except when carrying out the requirements of the APA. The Parole Board may be considered an agency, but it is specifically exempt from the APA under Neb. Rev. Stat. § 83-199.

Agency No.	Agency	Report Status
21	Fire Marshal, State	Overdue regulations reported
25	Health and Human Services, Department of	Overdue regulations reported
0	Fair, Nebraska State	No applicable regulations reported
9	Secretary of State	No applicable regulations reported
10	Auditor of Public Accounts	No applicable regulations reported
11	Attorney General	No applicable regulations reported
12	Treasurer, State	No applicable regulations reported
13	Education, Department of	No applicable regulations reported
13	Professional Practices Commission	No applicable regulations reported
14	Public Service Commission	No applicable regulations reported
16	Revenue, Department of	No applicable regulations reported
18	Agriculture, Department of	No applicable regulations reported
19	Banking and Finance, Department of	No applicable regulations reported
22	Insurance, Department of	No applicable regulations reported
23	Labor, Department of	No applicable regulations reported
24	Motor Vehicles, Department of	No applicable regulations reported
27	Transportation, Department of	No applicable regulations reported
28	Veterans' Affairs, Department of	No applicable regulations reported
29	Natural Resources, Department of	No applicable regulations reported
30	Electrical Division, State	No applicable regulations reported
32	Educational Lands and Funds, Board of	No applicable regulations reported
33	Game and Parks Commission	No applicable regulations reported
34	Library Commission	No applicable regulations reported
35	Liquor Control Commission	No applicable regulations reported
36	Racing Commission, Nebraska State	No applicable regulations reported
39	Brand Committee, Nebraska	No applicable regulations reported
40	Motor Vehicle Industry Licensing Board	No applicable regulations reported
41	Real Estate Commission	No applicable regulations reported
45	Barber Examiners, Board of	No applicable regulations reported
46	Correctional Services, Department of	No applicable regulations reported
48	Postsecondary Education, Coordinating Commission for	No applicable regulations reported
50	College System, Nebraska State	No applicable regulations reported
53	Real Property Appraiser Bd, Nebraska	No applicable regulations reported
54	Historical Society	No applicable regulations reported
56	Wheat Board, Nebraska	No applicable regulations reported
57	Oil and Gas Conservation Commission	No applicable regulations reported
58	Engineers and Architects, Board of	No applicable regulations reported
59	Geologists, Board of	No applicable regulations reported
60	Ethanol Board, Nebraska	No applicable regulations reported
61	Dairy Industry Development Board, Nebraska	No applicable regulations reported

62	Land Surveyors, Board of Examiners	No applicable regulations reported
63	Public Accountancy, Board of	No applicable regulations reported
64	State Patrol, Nebraska	No applicable regulations reported
65	Administrative Services, Department of	No applicable regulations reported
66	Abstracters Board of Examiners	No applicable regulations reported
67	Equal Opportunity Commission	No applicable regulations reported
68	Latino American Commission	No applicable regulations reported
69	Arts Council, Nebraska	No applicable regulations reported
70	Foster Care Review Office	No applicable regulations reported
71	Energy Office, Nebraska	No applicable regulations reported
72	Economic Development, Department of	No applicable regulations reported
73	Landscape Architects, Nebraska State Board of	No applicable regulations reported
74	Power Review Board	No applicable regulations reported
75	Investment Council, Nebraska	No applicable regulations reported
76	Indian Affairs, Nebraska Commission on	No applicable regulations reported
78	Criminal Justice, Commission on Law Enforcement and	No applicable regulations reported
81	Blind & Visually Impaired, Nebraska Commission for the	No applicable regulations reported
82	Deaf & Hard of Hearing, Nebraska Commission for the	No applicable regulations reported
84	Environmental Quality, Department of	No applicable regulations reported
85	Nebraska Public Employees Retirement Systems	No applicable regulations reported
86	Dry Bean Commission	No applicable regulations reported
87	Accountability and Disclosure Commission, Nebraska	No applicable regulations reported
88	Corn Board, Nebraska	No applicable regulations reported
91	Tourism Commission	No applicable regulations reported
92	Grain Sorghum Board, Nebraska	No applicable regulations reported
93	Tax Equalization and Review Commission	No applicable regulations reported
94	Public Advocacy, Commission on	No applicable regulations reported

2017 Regulations Report

1. Agency: State Fire Marshal
2. Were any bills passed **in 2017** that will require your agency to promulgate regulations?
 - Yes
 - No (If no, go to question 3.)

If yes, what is the bill number and subject of the regulation?

Year Passed	Bill Number	Subject of Regulation
2017	LB 263	One Call Notification Act
2017		
2017		
2017		
2017		

3. Were any bills passed **in 2016** that required your agency to promulgate regulations?
 - Yes
 - No (If no, go to question 5.)

If yes, what is the bill number, subject of the regulation, public hearing date, and regulation status?

Year Passed	Bill Number	Subject of Regulation	Date of Public Hearing	Status of Regulation
2016				
2016				
2016				
2016				
2016				

4. Did any of the bills passed **in 2016** have an appropriation?

- Yes
- No (If no, go to question 5.)

If yes, how are the funds being used while the promulgation process takes place?

Year Passed	Bill Number	Appropriation Status
2016		
2016		
2016		
2016		
2016		

5. Does your agency have any regulations required by bills passed **prior to 2016** that have not yet gone into effect?

- Yes
- No (If no, go to question 7.)

If yes, what is the bill number, year passed, subject of the regulation, public hearing date, and regulation status?

Year Passed	Bill Number	Subject of Regulation	Date of Public Hearing	Status of Regulation
2010	LB 880	Fireworks		Ongoing; being incorporated into larger regulation updates for entire Fire and Life Safety Code

6. Did any of the bills passed **prior to 2016** have an appropriation?

Yes

No

If yes, how has the agency used the funds while the promulgation process takes place?

Year Passed	Bill Number	Appropriation Status

7. Who should our office contact with questions about this report?

Name:

Email address:

Phone number:

**Legislative Performance Audit Committee
2019 Regulations Report**

1. Agency: HHS
2. Were any bills passed **in 2019** that will require your agency to promulgate regulations?
 - Yes
 - No (If no, go to question 3.)

If yes, what is the bill number and subject of the regulation?

Year Passed	Bill Number	Division	Subject of Regulation
2019	519	CFS	Criteria for opening an ongoing case upon allegations of trafficking a minor and processes related to reports of child abuse and neglect.
2019			

3. Were any bills passed **in 2018** that will require your agency to promulgate regulations?
 - Yes
 - No (If no, go to question 5.)

If yes, what is the bill number and subject of the regulation?

Year Passed	Bill Number	Division	Subject of Regulation
2018			
2018			

4. Did any of the bills passed **in 2018** have an appropriation?
 - Yes
 - No (If no, go to question 5.)

If yes, how are the funds being used while the promulgation process takes place?

Year Passed	Bill Number	Appropriation Status
2018		
2018		

5. Does your agency have any regulations required by bills passed **in 2017 or any year before 2017** that have not yet gone into effect?
- Yes
- No (If no, go to question 8.)

If yes, what is the bill number, effective date of the bill, public hearing date, and regulation status?

Year Passed	Bill Number	Subject of Regulation	Division	Effective Date of Bill	Date of Public Hearing	Status of Regulation
2017	LB 18	Licensure and Scope of practice for dental assistants and dental hygienists	PH Title 172 NAC 53 and 57	1-1-2018	7/8/2019	SEE LB 80. This law has been implemented. 172 NAC 53, 56 and 57 set for hearing 7-8-19. Significant work with stakeholders, including licensees, professional associations, and the Board of Dentistry, was necessary to reach consensus on multiple issues in these chapters which resulted in the hearing not taking place within one year after the effective date of the legislation.
2017	LB 225	Require training of foster parents on Sex Trafficking	CFS Title 395 NAC 3	4-28-2017 Background check	Hearing date expected to be	This law has been implemented. The contracts with the Agency Foster Care providers require training on sex trafficking. This allows for DHHS to

				provision effective 9-3-2017	scheduled by July 15, 2019	ensure this is happening pending regulation promulgation. CFS waited to draft regulations until the final Model Foster Family Home Licensing Standards were issued by the federal Administration for Children and Families which was provided February of this year. This ensures the Department does not propose regulations out of compliance with federal standards. Since then, the regulations are drafted and under review, then a hearing date will be set.
2017	LB 417	For Division of Behavioral Health – authority for peer services and standards; For Division of Medicaid and Long-Term Care -State Unit on Aging	MLTC Title 15 NAC 5 BH Title 206	8-24-2017	Hearing date expected to be scheduled by July 15, 2019	The statutory changes have been implemented. Draft regulations are under review, then a hearing date will be set.
2016	LB 698	Fingerprint based background checks for providers	MLTC Title 15 NAC 2 and Title 471 NAC 2	3- 31-2016.	Hearing date expected to be scheduled by July 15, 2019	The statutory changes have been implemented. Regulations are drafted and are working through the promulgation process.
2016	LB 746	Strengthening Families Act	CFS Title 390 NAC 11	7-1-2016	Hearing date expected to be scheduled by July 15, 2019	The agency has implemented all the required sections of the law. The Agency will seek a 2020 statute change because regulations are not needed to implement the law. The statute is self-executing.

2012	LB 1062	Adoption Assistance	CFS Title 479 NAC 7 and Title 395 NAC 4	7-19-2012	Hearing date expected to be scheduled by July 15, 2019	The agency has implemented all the required sections of the law. The Agency will seek a 2020 statute change because regulations are not needed to implement the law. The statute is self-executing.
2013	LB 265	Change licensure requirements of child caring/placing agencies and kinship home provisions	PH Title 391 NAC 7-8	5-25-2013	Hearing date expected to be scheduled by July 15, 2019	<p>This has been implemented. The regulations will include uniform expiration dates for child caring/placing agencies and standards for levels of care per the bill.</p> <p>391 NAC 7 and 8 are under review and waiting to be set for public hearing. Initially, several stakeholder meetings were held to obtain input. Program staff worked with DHHS Legal to address issues identified at stakeholder meetings.</p> <p>Kinship homes provisions have been promulgated in 395 NAC 3.</p>
2014	LB 276	Early Intervention Act, school/Medicaid reimbursement	MLTC Title 471 NAC 25	7-18-2014	Hearing date expected to be scheduled by July 15, 2019	The statutory changes have been implemented. The regulations are drafted and under review, then a hearing date will be set
2014	LB 853	Extended Guardianship & Central Registry	CFS Title 479 NAC 7-8 and Title 390 NAC 4	7-18-2014	Hearing date expected to be scheduled by July 15, 2019	<p>The Agency will seek a 2020 statutory change as the regulations are not needed to implement the extended guardianship portion of the law.</p> <p>Alternative Response regulations promulgated. The Alternative Response</p>

						portion of the bill is implemented. The Alternative Response regulations are promulgated at 395 NAC 9.
2014	LB 908	Extended Guardianship	CFS Title 479 NAC 7-8 and Title 390 NAC 4	7-18-2014	Hearing date expected to be scheduled by July 15, 2019	The Agency will seek a 2020 statutory change because regulations are not needed to implement the law. The statute is self-executing.
2015	LB 566	Indian Child Welfare Act	CFS Title 395 NAC 5	8-30-2015	Hearing date expected to be scheduled by July 15, 2019	The agency will seek a 2020 statutory change because regulations are not needed to implement the law. The statute is self-executing.
2015	LB 37	Adopt the Prescription Drug Safety Act and change and transfer pharmacy, prescription, and drug provisions	PH Title 172 NAC 128 and Title 175 NAC 8	8-30-2015	1 st Public Hearing 12/14/2016	Regulations are drafted. Comments from the public hearing resulted in substantive changes. Second hearing to be scheduled. 172 NAC 128 and 175 NAC 8 are being finalized for Legal review as part of the Governor's regulation project to implement the 2017 Executive Order changes. This law has been implemented.
2015	LB 80	Prove, change and eliminate anesthesia and sedation permit provisions under the Dentistry Practice Act	PH Title 172 NAC 56	7-1-2016	1 st Public Hearing 10/14/2016 2 nd Public Hearing 7/8/2019	Regulations are drafted. Comments from the public hearing resulted in substantive changes. The original promulgation process was terminated. A new promulgation process was initiated that will include changes

						<p>from LB 80 (2015) and LB 18 (2017). Those changes are drafted. 172 NAC 56 set for hearing 7-8-19.</p> <p>After the initial process was terminated, the changes from LB 80 were combined with the changes from LB 18.</p>
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6. For any bill your agency listed in question 5, please explain why the regulation has not been promulgated. If an explanation was provided in the question five table simply write “see above explanation”.

Year Passed	Bill Number	Division	Explanation for Timeframe of Promulgation
2016	LB 698	MLTC	The funds are being used in accordance with the appropriation. MLTC has drafted regulations and provided draft versions to stakeholders for review. The division is working through the process the administrative procedure act requires for regulation promulgation.
2016	LB 746	CFS	See explanation above.
2015	LB 80	PH	See explanation above.
2015	LB 37	MLTC/PH	See explanation above.
2014	LB 276	CFS/MLTC	See explanation above.
2014	LB 853	CFS	See explanation above.
2014	LB 908	CFS	See explanation above.
2013	LB 265	PH	See explanation above.
2012	LB 1062	CFS	See explanation above.

7. Did any of the bills passed **in 2017 or earlier** have an appropriation?

- Yes
- No

If yes, how has the agency used the funds while the promulgation process takes place?

Year Passed	Bill Number	Division	Appropriation Status

2017	LB 18A	PH	Funds go towards total expenditures for permanent and temporary salaries and per diems from funds appropriated; shall not exceed \$24,500 for FY2017-18 or \$32,666 for FY2018-19. DHHS Licensure Unit employed a temporary Health Licensing Specialist for 1 year to implement the initial functions of credentialing dental assistants and these additional credentials for dental hygienists.
2016	LB 698A	MLTC	The funds are being used in accordance with the appropriation. The funds are used to implement the new fingerprinting and background check requirements as directed by the legislation. Funds are also used towards administration costs for the program staff as well as aid for the claims payment.
2015	LB 243A	CFS	The funds are being used in accordance with the appropriation. The funds are used to implement a new category of eligibility for Medicaid as directed by the legislation. The Subsidized Adoption and Guardianship Assistance (SAGA) program for youth between the ages of 19-21 who entered an adoption or guardianship after the age of 16. Funds are used towards administration costs for the program staff as well as aid for the claims payment.
2015	LB 566A	CFS	The funds are being used in accordance with the appropriation. The funds were used for the hiring of an ICWA Program Specialist to develop methods and processes for monitoring the Department's compliance with ICWA. This position has been filled and the Program Specialist is performing these duties.
2014	LB 276A	CFS/MLTC	The funds are being used in accordance with the appropriation. The funds are used to implement the Medicaid In Public Schools, services, and Administrative Claiming as directed by the legislation. Funds are also used towards administration costs for the program staff as well as aid for the claims payment.

8. Who should our office contact with questions about this report?

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